

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TASHA G.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C20-1499-BAT

**ORDER AFFIRMING THE
COMMISSIONER AND DISMISSING
THE CASE**

Plaintiff Tasha G. seeks review of the denial of her application for Supplemental Security Income and Disability Insurance Benefits, arguing that the ALJ erred in evaluating the medical opinions. Dkt. 16. The Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

DISCUSSION

Plaintiff argues that the ALJ failed to properly address the opinions of examining psychiatrist Anna Borisovskaya, M.D., examining psychologist Anja Luthi, Psy.D., and the state agency consultants. Dkt. 16. When considering medical opinions (for applications filed on or after March 27, 2017), the ALJ considers the persuasiveness of the medical opinion using five factors (supportability, consistency, relationship with claimant, specialization, and other), but supportability and consistency are the two most important factors. 20 C.F.R. §§ 404.1520c(b)(2),

1 416.920c(b)(2), (c) (2017). The ALJ must explain in her decision how she considered the factors
2 of supportability and consistency. 20 C.F.R. §§ 404.1520c(b), 416.920c(b) (2017). The ALJ is
3 not required to explain how she considered the other factors unless the ALJ finds that two or
4 more medical opinions or prior administrative medical findings about the same issue are both
5 equally well-supported and consistent with the record, but not identical. 20 C.F.R.
6 §§ 404.1520c(b)(3), 416.920c(b)(3) (2017). The new regulations eliminate the agency's "treating
7 source rule," which gave special deference to treating doctors' opinions. 82 Fed. Reg. at 5853.

8 **A. Dr. Borisovskaya**

9 On request from plaintiff's counsel at the conclusion of the hearing, the ALJ ordered a
10 consultative examination, which Dr. Borisovskaya conducted in November 2019. Tr. 590. Dr.
11 Borisovskaya opined that plaintiff would have mild limitations in her ability to understand,
12 remember, and carry out simple instructions, moderate limitations in her ability to make
13 judgments on simple work-related decisions, and marked limitations in her ability to handle
14 complex instructions and complex work-related decisions; she would have marked limitations in
15 her ability to interact with others and deal with changes in a routine work setting; and she would
16 have difficulty attending work regularly and completing a normal work day. Tr. 596-97.

17 The ALJ found that although Dr. Borisovskaya stated she did not have the exact date
18 plaintiff's problems began, plaintiff's initial trauma happened while she was working at Walmart
19 from 2009 to 2013; the ALJ also noted that there was no record of mental health treatment before
20 mid-2016. Tr. 22. The ALJ found that while Dr. Borisovskaya documented plaintiff shaking and
21 stuttering during the examination, in regular treatment records plaintiff presented with
22 unremarkable mental status exams with some anxiety or depression, and even at Dr.
23 Borisovskaya's examination plaintiff was cooperative and made good effort and intermittent eye

1 contact, was appropriately groomed, had fair attention, linear thought process, and only stuttered
2 a little when talking about the stalking trauma. *Id.* The ALJ thus found that Dr. Borisovskaya's
3 opinion did not offer much persuasive value because it reflected plaintiff's allegations more than
4 mental status examination findings and was not generally consistent with plaintiff's presentation
5 throughout the relevant period. *Id.*

6 Plaintiff argues that the ALJ erred by cherry-picking the evidence, pointing out that the
7 ALJ did not mention several of Dr. Borisovskaya's findings on mental status exam, including
8 that plaintiff appeared spontaneous and genuine, she appeared in continuous distress, and her
9 mood was anxious and stressed. *Id.* Dkt. 16 at 5. However, while the ALJ must "make fairly
10 detailed findings in support of administrative decisions to permit courts to review those decisions
11 intelligently," the ALJ "need not discuss all evidence presented." *Vincent v. Heckler*, 739 F.2d
12 1393, 1394-95 (9th Cir. 1984). The ALJ discussed the mental status exam findings that she found
13 to be inconsistent with Dr. Borisovskaya's opinion and with other evidence in the record. The
14 fact that the ALJ did not recite every finding from Dr. Borisovskaya's mental status exam does
15 not establish that the ALJ improperly cherry-picked the record.

16 Plaintiff also argues that the ALJ improperly attempted to "play doctor" by interpreting
17 the medical evidence herself, asserting that the ALJ did not explain why the observations she
18 cited to were more significant than the ones she omitted. Dkt. 16 at 6. However, it is the ALJ's
19 responsibility to determine whether inconsistencies are material (or are in fact inconsistencies at
20 all) and whether certain factors are relevant to discount a medical opinion. *Morgan v. Comm'r of*
21 *Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999). The ALJ identified material inconsistencies
22 between Dr. Borisovskaya's opinion and her mental status exam findings and other evidence in
23 the record. This was not an improper attempt to "play doctor."

1 Plaintiff also faults the ALJ for failing to cite to specific mental status examinations
2 where plaintiff's presentation was inconsistent with her presentation to Dr. Borisovskaya. Dkt.
3 16 at 7. However, the ALJ stated that she found Dr. Borisovskaya's documentation of obvious
4 shaking and stuttering to be inconsistent with the generally "unremarkable mental status exams
5 with some anxiety or depression, as discussed herein." Tr. 22. In evaluating plaintiff's testimony,
6 the ALJ discussed these mostly unremarkable mental status exams. Tr. 20-21. The Court finds no
7 error in the ALJ's reference to treatment notes she had previously discussed.

8 Plaintiff further argues that in the mental exams the ALJ referred to, unremarkable
9 findings would be reasonable because plaintiff was presenting to her treating providers and
10 would "likely have some degree of comfort and be safe from PTSD triggers." Dkt 18 at 8.
11 Although plaintiff's proposed interpretation of these findings is plausible, the Court may not
12 favor plaintiff's proposed interpretation over the ALJ's. *Thomas v. Barnhart*, 278 F.3d 947, 954
13 (9th Cir. 2002). The ALJ reasonably found that plaintiff's typical presentation to treating
14 providers without tremors or stuttering was inconsistent with Dr. Borisovskaya's findings. This
15 Court may not disturb this finding.

16 Plaintiff next describes various treatment records that she asserts are consistent with Dr.
17 Borisovskaya's findings, arguing that the ALJ erred in failing to address these records. Dkt. 16 at
18 8-10. But plaintiff has not shown that these treatment notes constitute significant, probative
19 evidence such that the ALJ erred by failing to discuss them, or that the weight of this evidence
20 undermines the ALJ's finding that plaintiff typically presented normally with her treating
21 providers. Merely pointing to evidence that supports her proposed interpretation of the evidence
22 is not sufficient to undermine the ALJ's interpretation.
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1 Finally, plaintiff argues that even though the ALJ stated that she included significant
2 social limitations in deference to plaintiff's reports of fear of men and anxiety around strangers,
3 the social limitations the ALJ included (that plaintiff can have occasional routine superficial
4 interaction with coworkers and incidental interaction with the public, but cannot have
5 interactions with the public as part of her job duties) were inadequate and did not account for all
6 the limitations Dr. Borisovskaya opined. Dkt. 16 at 10-11. However, as the ALJ found Dr.
7 Borisovskaya's opinion to not have much persuasive value, the ALJ was not required to
8 incorporate all the limitations she opined into the RFC finding. *See Batson v. Comm'r of Soc.*
9 *Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ is not required to incorporate opinions
10 she properly discounted into the residual functional capacity finding). The ALJ considered both
11 the supportability and consistency of Dr. Borisovskaya's opinion and found the opinion to be
12 lacking in both. The fact that the ALJ nevertheless incorporated some of the social limitations
13 alleged by plaintiff into the RFC does not establish error in the ALJ's RFC finding.

14 **B. Dr. Luthi**

15 Dr. Luthi examined plaintiff in February 2018 and opined that plaintiff would have
16 marked limitations in the ability to perform activities within a schedule, maintain regular
17 attendance, and be punctual within customary tolerances without special supervision;
18 communicate and perform effectively in a work setting; maintain appropriate behavior in a work
19 setting; and complete a normal work day and work week without interruptions from
20 psychologically based symptoms; and that she would have moderate limitations in additional
21 work activities. Tr. 396. Dr. Luthi rated the overall severity of plaintiff's impairments as marked
22 and opined that her impairment would last 9 to 12 months with treatment; she recommended
23 vocational training and services once plaintiff's mental health had stabilized. *Id.*

1 The ALJ found this opinion to be of some persuasive value but found that it appeared to
2 be heavily based on plaintiff's self-reported symptoms and limitations. Tr. 22. The ALJ further
3 found it to be somewhat inconsistent with the medical records and with Dr. Luthi's own mental
4 status examination. *Id.* And the ALJ found that the marked limitations Dr. Luthi opined
5 conflicted with plaintiff's activities at that time, including writing daily, socializing with her
6 boyfriend and other friends, and spending time in public settings. *Id.*

7 Plaintiff argues that despite finding Dr. Luthi's opinion to be of some persuasive value,
8 the ALJ did not indicate that she adopted any of the limitations Dr. Luthi opined. Dkt. 16 at 12.
9 However, the RFC finding included limitations consistent with Dr. Luthi's opinion. For example,
10 Dr. Luthi opined that plaintiff would have mild or no limitations in following short and simple
11 instructions and moderate limitations in following detailed instructions; the ALJ limited plaintiff
12 to simple routine tasks. Tr. 19. Similarly, Dr. Luthi opined that plaintiff would have moderate
13 limitations in learning new tasks and adapting to changes in a routine work setting; the ALJ
14 limited plaintiff to a routine work environment with infrequent changes. *Id.* The ALJ did not err
15 by failing to adopt any of the limitations in Dr. Luthi's opinion.

16 Plaintiff argues that the ALJ's finding that Dr. Luthi based her opinion on plaintiff's
17 reports and not her own clinical observations is unsupported. Dkt. 16 at 12. She asserts that upon
18 mental status examination Dr. Luthi recorded her clinical observations, including that plaintiff's
19 speech was shaky, she was visibly anxious, her affect was consistent with her mood which
20 plaintiff described as "somewhere borderline terrified," and her memory was not within normal
21 limits. Tr. 397. She also asserts that Dr. Luthi relied on clinical assessments including the Beck
22 Depression Inventory, the Beck Anxiety Inventory, and the Personality Assessment Inventory.
23 *Id.*

1 However, the ALJ found that while Dr. Luthi opined that plaintiff had numerous marked
2 limitations and the overall severity of her impairment was marked, the only category she found
3 to be not “within normal limits” on mental status examination was memory, where Dr. Luthi
4 reported that plaintiff could not recall what she ate for dinner the night before and was able to
5 recall 2 of 3 words after a 5 minute delay. Tr. 397. Otherwise, Dr. Luthi found plaintiff’s thought
6 process and content, orientation, perception, fund of knowledge, concentration, abstract thought,
7 insight, and judgment all to be within normal limits. Tr. 397-98. The ALJ could reasonably find
8 that Dr. Luthi’s opinion that plaintiff had numerous marked limitations was unsupported by her
9 almost entirely normal clinical findings on mental status examination. This was a valid reason to
10 find Dr. Luthi’s opinion only somewhat persuasive.

11 Plaintiff argues that the ALJ’s finding that the opinion was inconsistent with plaintiff’s
12 reported activities was vague and inaccurate. Dkt. 16 at 13. Plaintiff bases her claim of
13 inaccuracy on her report in 2019 that she had stopped writing a few years ago. Tr. 550. However,
14 the ALJ specified the activities she found to be inconsistent with Dr. Luthi’s opinion—writing
15 daily, socializing with her boyfriend and other friends, and spending time in public settings—and
16 had discussed these reported activities earlier in the decision. Tr. 20-21. In that discussion, the
17 ALJ acknowledged plaintiff’s 2019 report that she had stopped writing a few years ago, but also
18 noted plaintiff’s and her boyfriend’s reports from 2018 that she was a self-published author, she
19 was trying to earn money from her writing, and that she wrote daily. Tr. 394, 264. Given that Dr.
20 Luthi performed her examination in February 2018, the ALJ’s comparison of Dr. Luthi’s opinion
21 to contemporary reports was not unreasonable. This was not a vague or inaccurate finding.

22 Plaintiff also argues that it is unclear how the cited activities reflect on the limitations Dr.
23 Luthi opined. Dkt. 16 at 13. However, the ALJ could reasonably find that plaintiff’s ability to

1 write on a daily basis and to socialize with others, including playing Dungeons and Dragons on a
2 weekly basis, was inconsistent with the marked impairments in functioning Dr. Luthi opined.

3 Plaintiff has not established error in the ALJ's assessment of Dr Luthi's opinion. The
4 ALJ gave valid reasons to find Dr. Luthi's opinion unsupported by and inconsistent with her own
5 examination findings and other evidence in the record and therefore only somewhat persuasive.

6 **C. Medical consultants**

7 Finally, plaintiff argues that in finding the state-agency medical consultants' opinions to
8 be persuasive, the ALJ failed to provide specific and legitimate or adequate explanation for why
9 she preferred these opinions over the examining doctors' opinions. Dkt. 16 at 14. She asserts that
10 the ALJ did not explain how the consultants' opinions were consistent with the evidence in the
11 record or how they were more consistent than the other medical opinions. *Id.* at 14-15.

12 Plaintiff's argument appears to be an attempt to apply the former "treating source rule" to
13 the decision at hand. But there is no longer any special deference due to treating or examining
14 sources. The ALJ is not required to explain why she preferred a reviewing source over a treating
15 or examining source, so long as she evaluates the persuasiveness of each opinion and explains
16 why she found each opinion persuasive or not. Here, the ALJ met the requirements of the new
17 rule by evaluating the supportability and consistency of the medical opinions, relying on the
18 opinions she found to be persuasive, and discounting those she found unpersuasive or not fully
19 persuasive. The ALJ did not err by relying on the consultants' opinions she found to be
20 persuasive or by failing to explain why she preferred those opinions over the examining doctors'
21 opinions.

22 In general, plaintiff presents an alternative interpretation of the evidence and the medical
23 opinions and asks the Court to accept her proposed alternative over the ALJ's evaluation of the

1 evidence. But the Court may neither reweigh the evidence nor substitute its judgment for that of
2 the Commissioner. *Thomas*, 278 F.3d at 954. When the evidence is susceptible to more than one
3 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.* Because the
4 ALJ's findings are supported by substantial evidence and free of legal error, the Court cannot
5 disturb those findings. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). Accordingly,
6 the Court affirms the ALJ's decision.

7 **CONCLUSION**

8 For the foregoing reasons, the Commissioner's decision is **AFFIRMED** and this case is
9 **DISMISSED** with prejudice.

10 DATED this 14th day of September, 2021.

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13 BRIAN A. TSUCHIDA
United States Magistrate Judge
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